IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Nirmal Kumar. Versus Judge, Labour Court cum Industrial Tribunal, Sri Ganganagar & ors.

S.B. Civil Writ Petition No. 1057/2007

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Date of Order: March 29, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. B.N. Kalla, for the petitioner.
Mr. B.L. Tiwari, Deputy Govt. Advocate, for the respondents.

BY THE COURT:

By the instant writ petition, the petitioner has impugned the Award Annx.3 dated 10-11-2003 passed by the respondent No.1 the Industrial Tribunal cum Labour Court, Sri Ganganagar (for short, "the Labour Court" hereinafter), whereby the Labour Court adjudicated and answered the reference made to it by the State Government vide Notification dated 9-10-2002 and dismissed the claim made by the petitioner holding that the petitioner is not entitled for any relief prayed for, as his services have not been terminated illegally w.e.f. 1-6-1994.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the Appropriate Government, i.e. the State

Government of Rajasthan, vide Notification dated 9-10-2002 referred the industrial dispute to the respondent No.1 Labour Court for adjudication as to whether termination of the services of the petitioner-workman w.e.f. 1-6-1994 is proper and valid. A statement of claim was filed by the petitioner-workman stating therein that his services were illegally terminated w.e.f. 1.6.1996.

According to the claim of the petitioner, as also the statement made by him on an affidavit, his services were not terminated w.e.f. 1-6-1994- the date mentioned in the reference. The petitioner categorically stated in the affidavit that his services were terminated with effect from 1-6-1994, whereas in the statement of claim, he has stated that his services were terminated with effect from 1-6-1996. The statement of claim and the affidavit filed by the petitioner are contrary to each other and, therefore, the Labour Court held that on 1-6-1994, the services of the petitioner were not terminated and therefore the propriety and legality of termination of his services w.e.f. 1.6.1994 does not arise.

Learned counsel for the petitioner submits that as a matter of fact, the services of the petitioner were terminated with effect from 1-6-1996 and not w.e.f. 1-6-1994, but in the reference, a wrong date has been mentioned and, therefore, the petitioner seeks a direction to the respondent-State, i.e. the

Appropriate Government, to make a fresh reference. He has relied on a decision of this Court in Mahaveer Conductor Vs. Nand Kishore, 2003 Western Law Cases (UC) 324 (Raj.), wherein this Court held that the Labour Court has no competence to correct, modify, amend or alter the terms of the reference or mention the date of termination etc. or proceed with the reference and accepting the date of termination as suggested by the workman and in case it does so, the award becomes nullity being without jurisdiction and based on a bad reference. While setting aside the Award impugned therein, a liberty was granted to the workman therein to approach the Appropriate Government to make proper/correct reference and if such a reference is made, the Labour Court was requested to decide the reference expeditiously in accordance with law.

In Madanpal Singh Vs. State of U.P. & ors., AIR 2000 SC 537, the Hon'ble Supreme Court examined the case wherein, while making the reference, name of the workman had wrongly been mentioned. The parties led the evidence knowing who was the real workman, but the Labour Court made the award of "no dispute" recording its conclusion that there was no workman-employee served the Establishment by the name the reference had been made and it was not possible for the Labour Court to proceed on the basis of the evidence led by the parties or treat the reference to have been made in favour of the correct person.

The Hon'ble Supreme Court held that the award was justified as the Labour Court, being a Court of limited jurisdiction and having no power to go beyond the terms of the reference, could not deal with the matter. However, in such an eventuality, either of the parties could make the application before the Appropriate Government to amend the reference and in the peculiar facts and circumstances of the case, the Labour Court itself could not ask the Appropriate Government to make an amendment in the said case, on being approached by the workman, the Appropriate Government amended the reference after the award had been made by the Labour Court. The Hon'ble Supreme Court directed the Labour Court to decide the matter afresh.

In Pottery Mazdoor Panchayat Vs. The Perfect Pottery Co. Ltd & Anr., AIR 1979 SC 1356, the Hon'ble Apex Court held that the Industrial Tribunal has no jurisdiction to go beyond the terms of reference and to inquire into the question which is not involved in the reference. If the Tribunal travels beyond the terms of the reference, the Award is nullity and would not confer any right upon the party.

Thus, it is clear that the Labour Court was justified in not travelling beyond the terms of the reference and dismissing the claim made by the petitioner vide award impugned. During adjudication of the claim, the petitioner-workman came to know that the terms of reference has not been correctly made as the

date of termination mentioned in the reference was 1-6-1994, whereas, in fact, on that date, his services were not terminated but his services were terminated with effect from 1-6-1996. Obviously, in place of the year 1994, the year 1996 could have been corrected by the Appropriate Government only and the Appropriate Government should have been approached either by the Labour Court or the petitioner-workman, but since the Labour Court has already decided the matter by the impugned award, it would be appropriate, while setting aside the award, to grant liberty to the petitioner to move the Appropriate Government for making an appropriate and correct reference.

In this view of the matter, the impugned award dated 11-10-2003 (Annx.3) is set aside with the liberty to the petitioner-workman to approach the Appropriate Government to make a proper and correct reference and if such a reference is made, the respondent Labour Court is directed to decide the reference utmost expeditiously since it would be a second round of litigation.

With the aforesaid observations, the writ petition stands disposed of. There shall be no order as to costs.

(H.R. PANWAR), J.

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